

AMENDED IN SENATE JUNE 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1760

Introduced by Committee on Budget (Oropeza (Chair), Bermudez, Chan, Chu, Diaz, Dutra, Dymally, Goldberg, Hancock, Jackson, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)

March 11, 2003

~~An act relating to the Budget Act of 2003.~~ *An act to amend Section 935.7 of, to amend, repeal, and add Section 13957 of, and to add and repeal Section 13964.5 of, the Government Code, and to amend, repeal, and add Sections 1001.90 and 1202.4 of the Penal Code, relating to victims of crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1760, as amended, Committee on Budget. ~~Budget Act of 2003~~
Victims of crimes.

(1) Existing law provides for the indemnification of victims of specified types of crimes by the California Victim Compensation and Government Claims Board. Existing law authorizes the Department of Transportation to adjust and pay any claim arising out of the activities of the department without the prior approval of the board if the amount paid is \$5,000 or less and either the Director of Finance or Director of Transportation certifies that a sufficient appropriation for the payment of the claim exists. Existing law requires the board, if the Department of Transportation elects not to pay the claim, to process the claim in the same manner as any other claim filed against the state.

This bill would authorize the department to deny, as well as adjust and pay, any such claim without the prior approval of the board if the amount claimed is \$5,000 or less. The bill would require the department to provide written notice of the rejection of the claim pursuant to existing law if the department elects not to pay any claim.

The bill would require the California Victim Compensation and Government Claims Board, in January of each year, until January 1, 2006, to determine whether sufficient funds will be available in the following fiscal year to pay all payments authorized and if the board determines that there will be insufficient funds, the board would be required to determine the percentage necessary to reduce awards and payments, as specified. Payments that would be reduced pursuant to this provision would be deemed to be payment in full of the authorized reimbursement.

(2) Existing law provides that the total award to or on behalf of each victim or derivative victim of a crime may not exceed \$35,000, except that the amount may be increased to \$70,000 if federal funds for that increase are available.

This bill would provide the total aggregate award to a victim and all derivative victims who sustain a loss as a result of the crime against the victim may not exceed this amount, except in the case where a victim is permanently disabled as a direct result of the crime. The bill would provide that a victim who is permanently disabled as a direct result of the crime would be individually eligible for the amount specified in existing law and a separate limit of \$70,000 would apply to the aggregate losses of all derivative victims deriving from that crime. These provisions would remain in effect until their repeal on January 1, 2006, on which date existing law would again become operative.

(3) Existing law requires the court to impose a diversion restitution fee that is commensurate with the seriousness of the offense on a criminal defendant whose case is diverted, as specified. Existing law authorizes the court to waive the diversion restitution fee if there are compelling and extraordinary reasons.

This bill would increase the minimum amount of a diversion restitution fee to not less than \$500 and not more than \$3,000 if the person is charged with a felony, and not less than \$250 and not more than \$1,000 if the person is charged with a misdemeanor. The bill would provide that a defendant's ability to pay may be considered in imposing a fine in excess of the statutory minimum. The bill would authorize a court to impose a restitution fine that is less than the statutory minimum

if it finds that a defendant is unable to pay the statutory minimum. The bill would also prohibit a court from staying the restitution fee after it is imposed. These provisions would remain in effect until their repeal on January 1, 2006, on which date existing law would again become operative.

(4) The Restitution Fund is continuously appropriated to the Victim Compensation and Government Claims Board for the purpose of indemnifying victims of crime.

This bill would make an appropriation by increasing the fees deposited in the Restitution Fund that are subject to continuous appropriation.

(5) The bill would require the Administrative Office of the Courts to establish a workgroup composed of a specified membership to review the current policies and processes by which criminal fines and penalties are imposed by the courts. The bill would require the workgroup to report its findings and recommendations to the Legislature no later than February 1, 2004.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2003.~~

Vote: ~~majority~~ ^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 ~~statutory changes relating to the Budget Act of 2003.~~

3 SECTION 1. Section 935.7 of the Government Code is
4 amended to read:

5 935.7. (a) Notwithstanding Section 935.6, the Department of
6 Transportation may *deny or* adjust and pay any claim arising out
7 of the activities of the department without the prior approval of the
8 California Victim Compensation and Government Claims Board
9 if both of the following conditions exist:

10 (1) The amount ~~paid~~ *claimed* is five thousand dollars (\$5,000)
11 or less.

12 (2) The Director of Finance or the Director of Transportation
13 certifies that a sufficient appropriation for the payment of the claim
14 exists.

(b) If the department elects not to pay any claim, the claim shall be processed by the California Victim Compensation and Government Claims Board in the same manner as any other claim filed against the state department shall provide the notice required by Section 913.

(c) Any person who submits any claim arising out of any activity of the Department of Transportation shall comply with every other applicable provision of this part relating to claims against state agencies.

SEC. 2. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars (\$10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary

1 caretaker of a minor victim whose claim is not denied or reduced
2 pursuant to Section 13956 in a total amount not to exceed ten
3 thousand dollars (\$10,000) for not more than two derivative
4 victims.

5 (B) The following persons may be reimbursed for the expense
6 of their outpatient mental health counseling in an amount not to
7 exceed three thousand dollars (\$3,000):

8 (i) A derivative victim not eligible for reimbursement pursuant
9 to subparagraph (A), provided that mental health counseling of a
10 derivative victim described in paragraph (5) of subdivision (c) of
11 Section 13955, shall be reimbursed only if that counseling is
12 necessary for the treatment of the victim.

13 (ii) A victim of a crime of unlawful sexual intercourse with a
14 minor committed in violation of subdivision (d) of Section 261.5
15 of the Penal Code. A derivative victim of a crime committed in
16 violation of subdivision (d) of Section 261.5 of the Penal Code
17 shall not be eligible for reimbursement of mental health
18 counseling expenses. The total award to or on behalf of a victim
19 of a crime committed in violation of subdivision (d) of Section
20 261.5 of the Penal Code may not exceed three thousand dollars
21 (\$3,000) for mental health counseling expenses only.

22 (C) The board may reimburse a victim or derivative victim for
23 outpatient mental health counseling in excess of that authorized by
24 subparagraphs (A) or (B) or for inpatient psychiatric,
25 psychological, or other mental health counseling if the claim is
26 based on dire or exceptional circumstances that require more
27 extensive treatment, as approved by the board.

28 (D) Expenses for psychiatric, psychological, or other mental
29 health counseling related services may be reimbursed only if the
30 services were provided by either of the following individuals:

31 (i) A person who would have been authorized to provide those
32 services pursuant to the provisions of former Article 1
33 (commencing with Section 13959) as it read on January 1, 2002.

34 (ii) A person who is licensed by the state to provide those
35 services, or who is properly supervised by a person who is so
36 licensed, subject to the board's approval and subject to the
37 limitations and restrictions the board may impose.

38 (3) Reimburse the expenses of nonmedical remedial care and
39 treatment rendered in accordance with a religious method of
40 healing recognized by state law.

1 (4) Subject to the limitations set forth in Section 13957.5,
2 authorize compensation equal to the loss of income or loss of
3 support, or both, that a victim or derivative victim incurs as a direct
4 result of the victim's or derivative victim's injury or the victim's
5 death. If the victim or derivative victim requests that the board give
6 priority to reimbursement of loss of income or support, the board
7 may not pay medical expenses, or mental health counseling
8 expenses, except upon the request of the victim or derivative
9 victim or after determining that payment of these expenses will not
10 decrease the funds available for payment of loss of income or
11 support.

12 (5) Authorize a cash payment to or on behalf of the victim for
13 job retraining or similar employment-oriented services.

14 (6) Reimburse the expense for installing or increasing
15 residential security, not to exceed one thousand dollars (\$1,000),
16 with respect to a crime that occurred in the victim's residence,
17 upon verification by law enforcement to be necessary for the
18 personal safety of the victim or by a mental health treatment
19 provider to be necessary for the emotional well-being of the
20 victim. Installing or increasing residential security may include,
21 but need not be limited to, both of the following:

22 (A) Home security device or system.

23 (B) Replacing or increasing the number of locks.

24 (7) Reimburse the expense of renovating or retrofitting a
25 victim's residence or a vehicle, or both, to make the residence, the
26 vehicle, or both, accessible or the vehicle operational by a victim
27 upon verification that the expense is medically necessary for a
28 victim who is permanently disabled as a direct result of the crime,
29 whether the disability is partial or total.

30 (8) Authorize a cash payment or reimbursement not to exceed
31 two thousand dollars (\$2,000) to a victim for expenses incurred in
32 relocating, if the expenses are determined by law enforcement to
33 be necessary for the personal safety of the victim or by a mental
34 health treatment provider to be necessary for the emotional
35 well-being of the victim. When a relocation payment or
36 reimbursement is provided to a victim of sexual assault or
37 domestic violence and the identity of the offender is known to the
38 victim, the victim shall agree not to inform the offender of the
39 location of the victim's new residence and not to allow the offender
40 on the premises at any time, or shall agree to seek a restraining

1 order against the offender. The cash payment or reimbursement
2 made under this subdivision shall only be awarded once to any
3 victim, except that the board may, under compelling
4 circumstances, award a second cash payment or reimbursement to
5 the same victim if both of the following conditions are met:

6 (A) The crime occurs more than three years from the date of the
7 crime giving rise to the initial relocation cash payment or
8 reimbursement.

9 (B) The crime does not involve the same offender.

10 (9) When a victim dies as a result of a crime, the board may
11 reimburse any individual who voluntarily, and without
12 anticipation of personal gain, pays or assumes the obligation to pay
13 any of the following expenses:

14 (A) The medical expenses incurred as a direct result of the
15 crime in an amount not to exceed the rates or limitations
16 established by the board.

17 (B) When the crime occurs in a residence, the reasonable costs
18 to clean the scene of the crime in an amount not to exceed one
19 thousand dollars (\$1,000). Services reimbursed pursuant to this
20 subdivision shall be performed by persons registered with the State
21 Department of Health Services as trauma scene waste practitioners
22 in accordance with Chapter 9.5 (commencing with Section
23 118321) of Part 14 of Division 104 of the Health and Safety Code.

24 (C) The funeral and burial expenses incurred as a direct result
25 of the crime, not to exceed seven thousand five hundred dollars
26 (\$7,500).

27 (b) ~~The (1) Except as otherwise provided in paragraph (2), the~~
28 ~~total aggregate award to or on behalf of each victim or derivative~~
29 ~~a victim and all derivative victims who sustain a loss as a result of~~
30 ~~the crime against that victim may not exceed thirty-five thousand~~
31 ~~dollars (\$35,000), except that this amount may be increased to~~
32 ~~seventy thousand dollars (\$70,000) if federal funds for that~~
33 ~~increase are available.~~

34 (2) *Subject to the limitations in Section 13957.5, but*
35 *notwithstanding paragraph (1) of this section, a victim*
36 *permanently disabled as a direct result of a crime shall be*
37 *individually eligible for an award in the amount limited as*
38 *provided in paragraph (1), and a separate limit of seventy*
39 *thousand dollars (\$70,000) shall apply to the aggregate losses of*

1 *all derivative victims that result from the crime against that*
2 *permanently disabled victim.*

3 *(c) This section shall remain in effect only until January 1,*
4 *2006, and as of that date is repealed, unless a later enacted statute,*
5 *that is enacted before January 1, 2006, deletes or extends that date.*

6 SEC. 3. *Section 13957 is added to the Government Code, to*
7 *read:*

8 *13957. (a) The board may grant for pecuniary loss, when the*
9 *board determines it will best aid the person seeking compensation,*
10 *as follows:*

11 *(1) Subject to the limitations set forth in Section 13957.2,*
12 *reimburse the amount of medical or medical-related expenses*
13 *incurred by the victim, including, but not limited to, eyeglasses,*
14 *hearing aids, dentures, or any prosthetic device taken, lost, or*
15 *destroyed during the commission of the crime, or the use of which*
16 *became necessary as a direct result of the crime.*

17 *(2) Subject to the limitations set forth in Section 13957.2,*
18 *reimburse the amount of outpatient psychiatric, psychological, or*
19 *other mental health counseling related expenses incurred by the*
20 *victim or derivative victim, including peer counseling services*
21 *provided by a rape crisis center as defined by Section 13837 of the*
22 *Penal Code, and including family psychiatric, psychological, or*
23 *mental health counseling for the successful treatment of the victim*
24 *provided to family members of the victim in the presence of the*
25 *victim, whether or not the family member relationship existed at*
26 *the time of the crime, that became necessary as a direct result of*
27 *the crime, subject to the following conditions:*

28 *(A) The following persons may be reimbursed for the expense*
29 *of their outpatient mental health counseling in an amount not to*
30 *exceed ten thousand dollars (\$10,000):*

31 *(i) A victim.*

32 *(ii) A derivative victim who is the surviving parent, sibling,*
33 *child, spouse, fiancé, or fiancée of a victim of a crime that directly*
34 *resulted in the death of the victim.*

35 *(iii) A derivative victim, as described in paragraphs (1) to (4),*
36 *inclusive, of subdivision (c) of Section 13955, who is the primary*
37 *caretaker of a minor victim whose claim is not denied or reduced*
38 *pursuant to Section 13956 in a total amount not to exceed ten*
39 *thousand dollars (\$10,000) for not more than two derivative*
40 *victims.*

1 (B) *The following persons may be reimbursed for the expense*
2 *of their outpatient mental health counseling in an amount not to*
3 *exceed three thousand dollars (\$3,000):*

4 (i) *A derivative victim not eligible for reimbursement pursuant*
5 *to subparagraph (A), provided that mental health counseling of a*
6 *derivative victim described in paragraph (5) of subdivision (c) of*
7 *Section 13955, shall be reimbursed only if that counseling is*
8 *necessary for the treatment of the victim.*

9 (ii) *A victim of a crime of unlawful sexual intercourse with a*
10 *minor committed in violation of subdivision (d) of Section 261.5*
11 *of the Penal Code. A derivative victim of a crime committed in*
12 *violation of subdivision (d) of Section 261.5 of the Penal Code*
13 *shall not be eligible for reimbursement of mental health counseling*
14 *expenses. The total award to or on behalf of a victim of a crime*
15 *committed in violation of subdivision (d) of Section 261.5 of the*
16 *Penal Code may not exceed three thousand dollars (\$3,000) for*
17 *mental health counseling expenses only.*

18 (C) *The board may reimburse a victim or derivative victim for*
19 *outpatient mental health counseling in excess of that authorized by*
20 *subparagraphs (A) or (B) or for inpatient psychiatric,*
21 *psychological, or other mental health counseling if the claim is*
22 *based on dire or exceptional circumstances that require more*
23 *extensive treatment, as approved by the board.*

24 (D) *Expenses for psychiatric, psychological, or other mental*
25 *health counseling related services may be reimbursed only if the*
26 *services were provided by either of the following individuals:*

27 (i) *A person who would have been authorized to provide those*
28 *services pursuant to the provisions of former Article 1*
29 *(commencing with Section 13959) as it read on January 1, 2002.*

30 (ii) *A person who is licensed by the state to provide those*
31 *services, or who is properly supervised by a person who is so*
32 *licensed, subject to the board's approval and subject to the*
33 *limitations and restrictions the board may impose.*

34 (3) *Reimburse the expenses of nonmedical remedial care and*
35 *treatment rendered in accordance with a religious method of*
36 *healing recognized by state law.*

37 (4) *Subject to the limitations set forth in Section 13957.5,*
38 *authorize compensation equal to the loss of income or loss of*
39 *support, or both, that a victim or derivative victim incurs as a*
40 *direct result of the victim's or derivative victim's injury or the*

1 victim's death. If the victim or derivative victim requests that the
2 board give priority to reimbursement of loss of income or support,
3 the board may not pay medical expenses, or mental health
4 counseling expenses, except upon the request of the victim or
5 derivative victim or after determining that payment of these
6 expenses will not decrease the funds available for payment of loss
7 of income or support.

8 (5) Authorize a cash payment to or on behalf of the victim for
9 job retraining or similar employment-oriented services.

10 (6) Reimburse the expense for installing or increasing
11 residential security, not to exceed one thousand dollars (\$1,000),
12 with respect to a crime that occurred in the victim's residence, upon
13 verification by law enforcement to be necessary for the personal
14 safety of the victim or by a mental health treatment provider to be
15 necessary for the emotional well-being of the victim. Installing or
16 increasing residential security may include, but need not be limited
17 to, both of the following:

18 (A) Home security device or system.

19 (B) Replacing or increasing the number of locks.

20 (7) Reimburse the expense of renovating or retrofitting a
21 victim's residence or a vehicle, or both, to make the residence, the
22 vehicle, or both, accessible or the vehicle operational by a victim
23 upon verification that the expense is medically necessary for a
24 victim who is permanently disabled as a direct result of the crime,
25 whether the disability is partial or total.

26 (8) Authorize a cash payment or reimbursement not to exceed
27 two thousand dollars (\$2,000) to a victim for expenses incurred in
28 relocating, if the expenses are determined by law enforcement to
29 be necessary for the personal safety of the victim or by a mental
30 health treatment provider to be necessary for the emotional
31 well-being of the victim. When a relocation payment or
32 reimbursement is provided to a victim of sexual assault or domestic
33 violence and the identity of the offender is known to the victim, the
34 victim shall agree not to inform the offender of the location of the
35 victim's new residence and not to allow the offender on the
36 premises at any time, or shall agree to seek a restraining order
37 against the offender. The cash payment or reimbursement made
38 under this subdivision shall only be awarded once to any victim,
39 except that the board may, under compelling circumstances, award

1 a second cash payment or reimbursement to the same victim if both
2 of the following conditions are met:

3 (A) The crime occurs more than three years from the date of the
4 crime giving rise to the initial relocation cash payment or
5 reimbursement.

6 (B) The crime does not involve the same offender.

7 (9) When a victim dies as a result of a crime, the board may
8 reimburse any individual who voluntarily, and without
9 anticipation of personal gain, pays or assumes the obligation to
10 pay any of the following expenses:

11 (A) The medical expenses incurred as a direct result of the
12 crime in an amount not to exceed the rates or limitations
13 established by the board.

14 (B) When the crime occurs in a residence, the reasonable costs
15 to clean the scene of the crime in an amount not to exceed one
16 thousand dollars (\$1,000). Services reimbursed pursuant to this
17 subdivision shall be performed by persons registered with the State
18 Department of Health Services as trauma scene waste
19 practitioners in accordance with Chapter 9.5 (commencing with
20 Section 118321) of Part 14 of Division 104 of the Health and Safety
21 Code.

22 (C) The funeral and burial expenses incurred as a direct result
23 of the crime, not to exceed seven thousand five hundred dollars
24 (\$7,500).

25 (b) The total award to or on behalf of each victim or derivative
26 victim may not exceed thirty-five thousand dollars (\$35,000),
27 except that this amount may be increased to seventy thousand
28 dollars (\$70,000) if federal funds for that increase are available.

29 (c) This section shall become operative on January 1, 2006.

30 SEC. 4. Section 13964.5 is added to the Government Code, to
31 read:

32 13964.5. (a) In January of each year, the board shall
33 determine whether sufficient funds will be available in the
34 following fiscal year to pay all payments authorized pursuant to
35 this chapter. If the board determines that there will be insufficient
36 funds available to pay all authorized payments, the board shall
37 determine the percentage necessary to reduce awards and
38 payments so that the total amount of payments made pursuant to
39 this chapter does not exceed the amount of money available. The

1 *board shall in the following fiscal year reduce all payments by the*
2 *percentage determined necessary.*

3 *(b) Payments made in a reduced amount pursuant to this*
4 *section shall be payment in full of the authorized reimbursement.*
5 *A provider who accepts a payment made pursuant to this section*
6 *shall accept that payment as payment-in-full and may not accept*
7 *additional amounts for that service from the recipient of the*
8 *service.*

9 *(c) This section shall remain in effect only until January 1,*
10 *2006, and as of that date is repealed, unless a later enacted statute,*
11 *that is enacted before January 1, 2006, deletes or extends that date.*

12 *SEC. 5. Section 1001.90 of the Penal Code is amended to*
13 *read:*

14 *1001.90. (a) For all persons charged with a felony or*
15 *misdemeanor whose case is diverted by the court pursuant to this*
16 *title, the court shall impose on the defendant a diversion restitution*
17 *fee in addition to any other administrative fee provided or imposed*
18 *under the law. This fee shall not be imposed upon persons whose*
19 *case is diverted by the court pursuant to Chapter 2.8 (commencing*
20 *with Section 1001.20).*

21 *(b) The diversion restitution fee imposed pursuant to this*
22 *section shall be set at the discretion of the court and shall be*
23 *commensurate with the seriousness of the offense, but shall not be*
24 *less than ~~one~~ five hundred dollars (~~\$100~~) (\$500), and not more than*
25 *~~one~~ three thousand dollars (~~\$1,000~~) (\$3,000) if the person is*
26 *charged with a felony, and shall not be less than two hundred fifty*
27 *dollars (\$250), and not more than one thousand dollars (\$1,000)*
28 *if the person is charged with a misdemeanor.*

29 *(c) The diversion restitution fee shall be ordered regardless of*
30 *the defendant's present ability to pay. However, if the court finds*
31 *that there are compelling and extraordinary reasons, the court may*
32 *waive imposition of the fee. When the waiver is granted, the court*
33 *shall state on the record all reasons supporting the waiver. A*
34 *defendant's inability to pay shall not be considered a compelling*
35 *and extraordinary reason not to impose a restitution fee. Inability*
36 *to pay may be considered only in increasing the amount of the*
37 *restitution fee in excess of the five hundred dollar (\$500) or two*
38 *hundred fifty dollar (\$250) minimum. The court may not stay the*
39 *restitution fee after it is imposed. Except as provided in this*

subdivision, the court shall impose the separate and additional diversion restitution fee required by this section.

(d) In setting the amount of the diversion restitution fee in excess of the ~~one~~ *five* hundred dollar ~~(\$100)~~ *(\$500)* or *two hundred fifty dollar (\$250)* minimum, the court shall consider any relevant factors, including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any other person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

(e) The court shall not limit the ability of the state to enforce the fee imposed by this section in the manner of a judgment in a civil action. The court shall not modify the amount of this fee except to correct an error in the setting of the amount of the fee imposed.

(f) The fee imposed pursuant to this section shall be immediately deposited in the Restitution Fund for use pursuant to Section ~~13967~~ *13950* of the Government Code.

(g) The board of supervisors of any county may impose a fee at its discretion to cover the actual administrative costs of collection of the restitution fee, not to exceed 10 percent of the amount ordered to be paid. Any fee imposed pursuant to this subdivision shall be deposited in the general fund of the county.

(h) The state shall pay the county agency responsible for collecting the diversion restitution fee owed to the Restitution Fund under this section, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall

1 be used to augment the budgets for the county agencies responsible
2 for collection of funds owed to the Restitution Fund as provided
3 in this section. The 10 percent rebates shall not be used to supplant
4 county funding.

5 (i) As used in this section, “diversion” also means deferred
6 entry of judgment pursuant to Chapter 2.5 (commencing with
7 Section 1000).

8 (j) *This section shall remain in effect only until January 1,*
9 *2006, and as of that date is repealed, unless a later enacted statute,*
10 *that is enacted before January 1, 2006, deletes or extends that date.*

11 SEC. 6. Section 1001.90 is added to the Penal Code, to read:

12 1001.90. (a) *For all persons charged with a felony or*
13 *misdemeanor whose case is diverted by the court pursuant to this*
14 *title, the court shall impose on the defendant a diversion restitution*
15 *fee in addition to any other administrative fee provided or imposed*
16 *under the law. This fee shall not be imposed upon persons whose*
17 *case is diverted by the court pursuant to Chapter 2.8 (commencing*
18 *with Section 1001.20).*

19 (b) *The diversion restitution fee imposed pursuant to this*
20 *section shall be set at the discretion of the court and shall be*
21 *commensurate with the seriousness of the offense, but shall not be*
22 *less than one hundred dollars (\$100), and not more than one*
23 *thousand dollars (\$1,000).*

24 (c) *The diversion restitution fee shall be ordered regardless of*
25 *the defendant’s present ability to pay. However, if the court finds*
26 *that there are compelling and extraordinary reasons, the court may*
27 *waive imposition of the fee. When the waiver is granted, the court*
28 *shall state on the record all reasons supporting the waiver. Except*
29 *as provided in this subdivision, the court shall impose the separate*
30 *and additional diversion restitution fee required by this section.*

31 (d) *In setting the amount of the diversion restitution fee in*
32 *excess of the one hundred dollar (\$100) minimum, the court shall*
33 *consider any relevant factors, including, but not limited to, the*
34 *defendant’s ability to pay, the seriousness and gravity of the offense*
35 *and the circumstances of its commission, any economic gain*
36 *derived by the defendant as a result of the crime, and the extent to*
37 *which any other person suffered any losses as a result of the crime.*
38 *Those losses may include pecuniary losses to the victim or his or*
39 *her dependents as well as intangible losses, such as psychological*
40 *harm caused by the crime. Consideration of a defendant’s ability*

1 to pay may include his or her future earning capacity. A defendant
2 shall bear the burden of demonstrating the lack of his or her ability
3 to pay. Express findings by the court as to the factors bearing on
4 the amount of the fee shall not be required. A separate hearing for
5 the diversion restitution fee shall not be required.

6 (e) The court shall not limit the ability of the state to enforce the
7 fee imposed by this section in the manner of a judgment in a civil
8 action. The court shall not modify the amount of this fee except to
9 correct an error in the setting of the amount of the fee imposed.

10 (f) The fee imposed pursuant to this section shall be
11 immediately deposited in the Restitution Fund for use pursuant to
12 Section 13950 of the Government Code.

13 (g) The board of supervisors of any county may impose a fee at
14 its discretion to cover the actual administrative costs of collection
15 of the restitution fee, not to exceed 10 percent of the amount
16 ordered to be paid. Any fee imposed pursuant to this subdivision
17 shall be deposited in the general fund of the county.

18 (h) The state shall pay the county agency responsible for
19 collecting the diversion restitution fee owed to the Restitution
20 Fund under this section, 10 percent of the funds so owed and
21 collected by the county agency and deposited in the Restitution
22 Fund. This payment shall be made only when the funds are
23 deposited in the Restitution Fund within 45 days of the end of the
24 month in which the funds are collected. Receiving 10 percent of the
25 moneys collected as being owed to the Restitution Fund shall be
26 considered an incentive for collection efforts and shall be used for
27 furthering these collection efforts. The 10 percent rebates shall be
28 used to augment the budgets for the county agencies responsible
29 for collection of funds owed to the Restitution Fund as provided in
30 this section. The 10 percent rebates shall not be used to supplant
31 county funding.

32 (i) As used in this section, “diversion” also means deferred
33 entry of judgment pursuant to Chapter 2.5 (commencing with
34 Section 1000).

35 (j) This section shall become operative on January 1, 2006.

36 SEC. 7. Section 1202.4 of the Penal Code is amended to read:

37 1202.4. (a) (1) It is the intent of the Legislature that a victim
38 of crime who incurs any economic loss as a result of the
39 commission of a crime shall receive restitution directly from any
40 defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than ~~two~~ *five* hundred dollars ~~(\$200)~~ *(\$500)*, and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than ~~one~~ *two* hundred ~~fifty~~ dollars ~~(\$100)~~ *(\$250)*, and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of ~~two~~ *five* hundred dollars ~~(\$200)~~ *(\$500)* multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) (1) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. ~~Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum.~~

(2) *A defendant's ability to pay may be considered in imposing a fine in excess of the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum. Where the court finds that the defendant is unable to pay the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum fine, the court may impose a fine that is between two hundred dollars (\$200) and five hundred*

dollars (\$500) for a felony conviction, and a fine that is between one hundred dollars (\$100) and two hundred fifty dollars (\$250) for a misdemeanor conviction.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the ~~two-hundred-dollar (\$200) or one-hundred-dollar (\$100)~~ *five hundred dollar (\$500) or two hundred fifty dollar (\$250)* minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim

1 shall be notified of that motion at least 10 days prior to the
2 proceeding held to decide the motion.

3 (2) Determination of the amount of restitution ordered
4 pursuant to this subdivision shall not be affected by the
5 indemnification or subrogation rights of any third party.
6 Restitution ordered pursuant to this subdivision shall be ordered
7 to be deposited to the Restitution Fund to the extent that the victim,
8 as defined in subdivision (k), has received assistance from the
9 Victims of Crime Program pursuant to ~~Article 1 (commencing~~
10 ~~with Section 13959)~~ of Chapter 5 (*commencing with Section*
11 *13950*) of Part 4 of Division 3 of Title 2 of the Government Code.

12 (3) To the extent possible, the restitution order shall be
13 prepared by the sentencing court, shall identify each victim and
14 each loss to which it pertains, and shall be of a dollar amount that
15 is sufficient to fully reimburse the victim or victims for every
16 determined economic loss incurred as the result of the defendant's
17 criminal conduct, including, but not limited to, all of the
18 following:

19 (A) Full or partial payment for the value of stolen or damaged
20 property. The value of stolen or damaged property shall be the
21 replacement cost of like property, or the actual cost of repairing the
22 property when repair is possible.

23 (B) Medical expenses.

24 (C) Mental health counseling expenses.

25 (D) Wages or profits lost due to injury incurred by the victim,
26 and if the victim is a minor, wages or profits lost by the minor's
27 parent, parents, guardian, or guardians, while caring for the
28 injured minor. Lost wages shall include any commission income
29 as well as any base wages. Commission income shall be
30 established by evidence of commission income during the
31 12-month period prior to the date of the crime for which restitution
32 is being ordered, unless good cause for a shorter time period is
33 shown.

34 (E) Wages or profits lost by the victim, and if the victim is a
35 minor, wages or profits lost by the minor's parent, parents,
36 guardian, or guardians, due to time spent as a witness or in assisting
37 the police or prosecution. Lost wages shall include any
38 commission income as well as any base wages. Commission
39 income shall be established by evidence of commission income
40 during the 12-month period prior to the date of the crime for which

1 restitution is being ordered, unless good cause for a shorter time
2 period is shown.

3 (F) Noneconomic losses, including, but not limited to,
4 psychological harm, for felony violations of Section 288.

5 (G) Interest, at the rate of 10 percent per annum, that accrues
6 as of the date of sentencing or loss, as determined by the court.

7 (H) Actual and reasonable attorney's fees and other costs of
8 collection accrued by a private entity on behalf of the victim.

9 (I) Expenses incurred by an adult victim in relocating away
10 from the defendant, including, but not limited to, deposits for
11 utilities and telephone service, deposits for rental housing,
12 temporary lodging and food expenses, clothing, and personal
13 items. Expenses incurred pursuant to this section shall be verified
14 by law enforcement to be necessary for the personal safety of the
15 victim or by a mental health treatment provider to be necessary for
16 the emotional well-being of the victim.

17 (J) Expenses to install or increase residential security incurred
18 related to a crime, as defined in subdivision (c) of Section 667.5,
19 including, but not limited to, a home security device or system, or
20 replacing or increasing the number of locks.

21 (K) Expenses to retrofit a residence or vehicle, or both, to make
22 the residence accessible to or the vehicle operational by the victim,
23 if the victim is permanently disabled, whether the disability is
24 partial or total, as a direct result of the crime.

25 (4) (A) If, as a result of the defendant's conduct, the
26 Restitution Fund has provided assistance to or on behalf of a victim
27 or derivative victim pursuant to ~~Article 1 (commencing with~~
28 ~~Section 13959)~~ of Chapter 5 (*commencing with Section 13950*) of
29 Part 4 of Division 3 of Title 2 of the Government Code, the amount
30 of assistance provided shall be presumed to be a direct result of the
31 defendant's criminal conduct and shall be included in the amount
32 of the restitution ordered.

33 (B) The amount of assistance provided by the Restitution Fund
34 shall be established by copies of bills submitted to the ~~State Board~~
35 ~~of Control~~ *California Victim Compensation and Government*
36 *Claims Board* reflecting the amount paid by the board and whether
37 the services for which payment was made were for medical or
38 dental expenses, funeral or burial expenses, mental health
39 counseling, wage or support losses, or rehabilitation. Certified
40 copies of these bills provided by the ~~State Board of Control~~

1 *California Victim Compensation and Government Claims Board*
2 and redacted to protect the privacy and safety of the victim or any
3 legal privilege, together with a statement made under penalty of
4 perjury by the custodian of records that those bills were submitted
5 to and were paid by the ~~State Board of Control~~ *California Victim*
6 *Compensation and Government Claims Board*, shall be sufficient
7 to meet this requirement.

8 (C) If the defendant offers evidence to rebut the presumption
9 established by this paragraph, the court may release additional
10 information contained in the records of the ~~State Board of Control~~
11 *California Victim Compensation and Government Claims Board*
12 to the defendant only after reviewing that information in camera
13 and finding that the information is necessary for the defendant to
14 dispute the amount of the restitution order.

15 (5) Except as provided in paragraph (6), in any case in which
16 an order may be entered pursuant to this subdivision, the defendant
17 shall prepare and file a disclosure identifying all assets, income,
18 and liabilities in which the defendant held or controlled a present
19 or future interest as of the date of the defendant's arrest for the
20 crime for which restitution may be ordered. This disclosure shall
21 be available to the victim pursuant to Section 1214, and any use the
22 court may make of the disclosure shall be subject to the restrictions
23 of subdivision (g). The disclosure shall be signed by the defendant
24 upon a form approved or adopted by the Judicial Council for the
25 purpose of facilitating the disclosure. Any defendant who willfully
26 states as true any material matter that he or she knows to be false
27 on the disclosure required by this subdivision is guilty of a
28 misdemeanor, unless this conduct is punishable as perjury or
29 another provision of law provides for a greater penalty.

30 (6) A defendant who fails to file the financial disclosure
31 required in paragraph (5), but who has filed a financial affidavit or
32 financial information pursuant to subdivision (c) of Section 987,
33 shall be deemed to have waived the confidentiality of that affidavit
34 or financial information as to a victim in whose favor the order of
35 restitution is entered pursuant to subdivision (f). The affidavit or
36 information shall serve in lieu of the financial disclosure required
37 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
38 apply.

39 (7) Except as provided in paragraph (6), the defendant shall file
40 the disclosure with the clerk of the court no later than the date set

1 for the defendant's sentencing, unless otherwise directed by the
2 court. The disclosure may be inspected or copied as provided by
3 subdivision (b), (c), or (d) of Section 1203.05.

4 (8) In its discretion, the court may relieve the defendant of the
5 duty under paragraph (7) of filing with the clerk by requiring that
6 the defendant's disclosure be submitted as an attachment to, and
7 be available to, those authorized to receive the following:

8 (A) Any report submitted pursuant to subparagraph (C) of
9 paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)
10 of Section 1203.

11 (B) Any stipulation submitted pursuant to paragraph (4) of
12 subdivision (b) of Section 1203.

13 (C) Any report by the probation officer, or any information
14 submitted by the defendant applying for a conditional sentence
15 pursuant to subdivision (d) of Section 1203.

16 (9) The court may consider a defendant's unreasonable failure
17 to make a complete disclosure pursuant to paragraph (5) as any of
18 the following:

19 (A) A circumstance in aggravation of the crime in imposing a
20 term under subdivision (b) of Section 1170.

21 (B) A factor indicating that the interests of justice would not be
22 served by admitting the defendant to probation under Section
23 1203.

24 (C) A factor indicating that the interests of justice would not be
25 served by conditionally sentencing the defendant under Section
26 1203.

27 (D) A factor indicating that the interests of justice would not be
28 served by imposing less than the maximum fine and sentence fixed
29 by law for the case.

30 (10) A defendant's failure or refusal to make the required
31 disclosure pursuant to paragraph (5) shall not delay entry of an
32 order of restitution or pronouncement of sentence. In appropriate
33 cases, the court may do any of the following:

34 (A) Require the defendant to be examined by the district
35 attorney pursuant to subdivision (h).

36 (B) If sentencing the defendant under Section 1170, provide
37 that the victim shall receive a copy of the portion of the probation
38 report filed pursuant to Section 1203.10 concerning the
39 defendant's employment, occupation, finances, and liabilities.

1 (C) If sentencing the defendant under Section 1203, set a date
2 and place for submission of the disclosure required by paragraph
3 (5) as a condition of probation or suspended sentence.

4 (g) The court shall order full restitution unless it finds
5 compelling and extraordinary reasons for not doing so, and states
6 those reasons on the record. A defendant's inability to pay shall not
7 be considered a compelling and extraordinary reason not to impose
8 a restitution order, nor shall inability to pay be a consideration in
9 determining the amount of a restitution order.

10 (h) The district attorney may request an order of examination
11 pursuant to the procedures specified in Article 2 (commencing
12 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
13 2 of the Code of Civil Procedure, in order to determine the
14 defendant's financial assets for purposes of collecting on the
15 restitution order.

16 (i) A restitution order imposed pursuant to subdivision (f) shall
17 be enforceable as if the order were a civil judgment.

18 (j) The making of a restitution order pursuant to subdivision (f)
19 shall not affect the right of a victim to recovery from the
20 Restitution Fund as otherwise provided by law, except to the extent
21 that restitution is actually collected pursuant to the order.
22 Restitution collected pursuant to this subdivision shall be credited
23 to any other judgments for the same losses obtained against the
24 defendant arising out of the crime for which the defendant was
25 convicted.

26 (k) For purposes of this section, "victim" shall include all of
27 the following:

28 (1) The immediate surviving family of the actual victim.

29 (2) Any corporation, business trust, estate, trust, partnership,
30 association, joint venture, government, governmental
31 subdivision, agency, or instrumentality, or any other legal or
32 commercial entity when that entity is a direct victim of a crime.

33 (3) "Derivative victims" as defined in Section ~~13960~~ 13951 of
34 the Government Code.

35 (l) At its discretion, the board of supervisors of any county may
36 impose a fee to cover the actual administrative cost of collecting
37 the restitution fine, not to exceed 10 percent of the amount ordered
38 to be paid, to be added to the restitution fine and included in the
39 order of the court, the proceeds of which shall be deposited in the
40 general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section ~~13966.04~~ 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

~~(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:~~

~~(A) A majority of judges of a court apply to the Judicial Council for an extension.~~

~~(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).~~

~~(C) The Judicial Council grants the extension upon finding good cause.~~

~~(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.~~

~~(p) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.~~

SEC. 8. Section 1202.4 is added to the Penal Code, to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the

1 commission of a crime shall receive restitution directly from any
2 defendant convicted of that crime.

3 (2) Upon a person being convicted of any crime in the State of
4 California, the court shall order the defendant to pay a fine in the
5 form of a penalty assessment in accordance with Section 1464.

6 (3) The court, in addition to any other penalty provided or
7 imposed under the law, shall order the defendant to pay both of the
8 following:

9 (A) A restitution fine in accordance with subdivision (b).

10 (B) Restitution to the victim or victims, if any, in accordance
11 with subdivision (f), which shall be enforceable as if the order were
12 a civil judgment.

13 (b) In every case where a person is convicted of a crime, the
14 court shall impose a separate and additional restitution fine,
15 unless it finds compelling and extraordinary reasons for not doing
16 so, and states those reasons on the record.

17 (1) The restitution fine shall be set at the discretion of the court
18 and commensurate with the seriousness of the offense, but shall not
19 be less than two hundred dollars (\$200), and not more than ten
20 thousand dollars (\$10,000), if the person is convicted of a felony,
21 and shall not be less than one hundred dollars (\$100), and not
22 more than one thousand dollars (\$1,000), if the person is convicted
23 of a misdemeanor.

24 (2) In setting a felony restitution fine, the court may determine
25 the amount of the fine as the product of two hundred dollars (\$200)
26 multiplied by the number of years of imprisonment the defendant
27 is ordered to serve, multiplied by the number of felony counts of
28 which the defendant is convicted.

29 (c) The court shall impose the restitution fine unless it finds
30 compelling and extraordinary reasons for not doing so, and states
31 those reasons on the record. A defendant's inability to pay shall not
32 be considered a compelling and extraordinary reason not to
33 impose a restitution fine. Inability to pay may be considered only
34 in increasing the amount of the restitution fine in excess of the two
35 hundred dollar (\$200) or one hundred dollar (\$100) minimum.

36 (d) In setting the amount of the fine pursuant to subdivision (b)
37 in excess of the two hundred dollar (\$200) or one hundred dollar
38 (\$100) minimum, the court shall consider any relevant factors
39 including, but not limited to, the defendant's inability to pay, the
40 seriousness and gravity of the offense and the circumstances of its

1 commission, any economic gain derived by the defendant as a
2 result of the crime, the extent to which any other person suffered
3 any losses as a result of the crime, and the number of victims
4 involved in the crime. Those losses may include pecuniary losses
5 to the victim or his or her dependents as well as intangible losses,
6 such as psychological harm caused by the crime. Consideration of
7 a defendant's inability to pay may include his or her future earning
8 capacity. A defendant shall bear the burden of demonstrating his
9 or her inability to pay. Express findings by the court as to the
10 factors bearing on the amount of the fine shall not be required. A
11 separate hearing for the fine shall not be required.

12 (e) The restitution fine shall not be subject to penalty
13 assessments as provided in Section 1464, and shall be deposited
14 in the Restitution Fund in the State Treasury.

15 (f) In every case in which a victim has suffered economic loss
16 as a result of the defendant's conduct, the court shall require that
17 the defendant make restitution to the victim or victims in an amount
18 established by court order, based on the amount of loss claimed by
19 the victim or victims or any other showing to the court. If the
20 amount of loss cannot be ascertained at the time of sentencing, the
21 restitution order shall include a provision that the amount shall be
22 determined at the direction of the court. The court shall order full
23 restitution unless it finds compelling and extraordinary reasons for
24 not doing so, and states them on the record.

25 (1) The defendant has the right to a hearing before a judge to
26 dispute the determination of the amount of restitution. The court
27 may modify the amount, on its own motion or on the motion of the
28 district attorney, the victim or victims, or the defendant. If a motion
29 is made for modification of a restitution order, the victim shall be
30 notified of that motion at least 10 days prior to the proceeding held
31 to decide the motion.

32 (2) Determination of the amount of restitution ordered
33 pursuant to this subdivision shall not be affected by the
34 indemnification or subrogation rights of any third party.
35 Restitution ordered pursuant to this subdivision shall be ordered
36 to be deposited to the Restitution Fund to the extent that the victim,
37 as defined in subdivision (k), has received assistance from the
38 Victims of Crime Program pursuant to Chapter 5 (commencing
39 with Section 13950) of Part 4 of Division 3 of Title 2 of the
40 Government Code.

1 (3) *To the extent possible, the restitution order shall be*
2 *prepared by the sentencing court, shall identify each victim and*
3 *each loss to which it pertains, and shall be of a dollar amount that*
4 *is sufficient to fully reimburse the victim or victims for every*
5 *determined economic loss incurred as the result of the defendant's*
6 *criminal conduct, including, but not limited to, all of the following:*

7 (A) *Full or partial payment for the value of stolen or damaged*
8 *property. The value of stolen or damaged property shall be the*
9 *replacement cost of like property, or the actual cost of repairing the*
10 *property when repair is possible.*

11 (B) *Medical expenses.*

12 (C) *Mental health counseling expenses.*

13 (D) *Wages or profits lost due to injury incurred by the victim,*
14 *and if the victim is a minor, wages or profits lost by the minor's*
15 *parent, parents, guardian, or guardians, while caring for the*
16 *injured minor. Lost wages shall include any commission income as*
17 *well as any base wages. Commission income shall be established*
18 *by evidence of commission income during the 12-month period*
19 *prior to the date of the crime for which restitution is being ordered,*
20 *unless good cause for a shorter time period is shown.*

21 (E) *Wages or profits lost by the victim, and if the victim is a*
22 *minor, wages or profits lost by the minor's parent, parents,*
23 *guardian, or guardians, due to time spent as a witness or in*
24 *assisting the police or prosecution. Lost wages shall include any*
25 *commission income as well as any base wages. Commission*
26 *income shall be established by evidence of commission income*
27 *during the 12-month period prior to the date of the crime for which*
28 *restitution is being ordered, unless good cause for a shorter time*
29 *period is shown.*

30 (F) *Noneconomic losses, including, but not limited to,*
31 *psychological harm, for felony violations of Section 288.*

32 (G) *Interest, at the rate of 10 percent per annum, that accrues*
33 *as of the date of sentencing or loss, as determined by the court.*

34 (H) *Actual and reasonable attorney's fees and other costs of*
35 *collection accrued by a private entity on behalf of the victim.*

36 (I) *Expenses incurred by an adult victim in relocating away*
37 *from the defendant, including, but not limited to, deposits for*
38 *utilities and telephone service, deposits for rental housing,*
39 *temporary lodging and food expenses, clothing, and personal*
40 *items. Expenses incurred pursuant to this section shall be verified*

1 *by law enforcement to be necessary for the personal safety of the*
2 *victim or by a mental health treatment provider to be necessary for*
3 *the emotional well-being of the victim.*

4 *(J) Expenses to install or increase residential security incurred*
5 *related to a crime, as defined in subdivision (c) of Section 667.5,*
6 *including, but not limited to, a home security device or system, or*
7 *replacing or increasing the number of locks.*

8 *(K) Expenses to retrofit a residence or vehicle, or both, to make*
9 *the residence accessible to or the vehicle operational by the victim,*
10 *if the victim is permanently disabled, whether the disability is*
11 *partial or total, as a direct result of the crime.*

12 *(4) (A) If, as a result of the defendant's conduct, the Restitution*
13 *Fund has provided assistance to or on behalf of a victim or*
14 *derivative victim pursuant to Chapter 5 (commencing with Section*
15 *13950) of Part 4 of Division 3 of Title 2 of the Government Code,*
16 *the amount of assistance provided shall be presumed to be a direct*
17 *result of the defendant's criminal conduct and shall be included in*
18 *the amount of the restitution ordered.*

19 *(B) The amount of assistance provided by the Restitution Fund*
20 *shall be established by copies of bills submitted to the California*
21 *Victim Compensation and Government Claims Board reflecting*
22 *the amount paid by the board and whether the services for which*
23 *payment was made were for medical or dental expenses, funeral*
24 *or burial expenses, mental health counseling, wage or support*
25 *losses, or rehabilitation. Certified copies of these bills provided by*
26 *the California Victim Compensation and Government Claims*
27 *Board and redacted to protect the privacy and safety of the victim*
28 *or any legal privilege, together with a statement made under*
29 *penalty of perjury by the custodian of records that those bills were*
30 *submitted to and were paid by the California Victim Compensation*
31 *and Government Claims Board, shall be sufficient to meet this*
32 *requirement.*

33 *(C) If the defendant offers evidence to rebut the presumption*
34 *established by this paragraph, the court may release additional*
35 *information contained in the records of the California Victim*
36 *Compensation and Government Claims Board to the defendant*
37 *only after reviewing that information in camera and finding that*
38 *the information is necessary for the defendant to dispute the*
39 *amount of the restitution order.*

1 (5) *Except as provided in paragraph (6), in any case in which*
2 *an order may be entered pursuant to this subdivision, the defendant*
3 *shall prepare and file a disclosure identifying all assets, income,*
4 *and liabilities in which the defendant held or controlled a present*
5 *or future interest as of the date of the defendant's arrest for the*
6 *crime for which restitution may be ordered. This disclosure shall*
7 *be available to the victim pursuant to Section 1214, and any use*
8 *the court may make of the disclosure shall be subject to the*
9 *restrictions of subdivision (g). The disclosure shall be signed by the*
10 *defendant upon a form approved or adopted by the Judicial*
11 *Council for the purpose of facilitating the disclosure. Any*
12 *defendant who willfully states as true any material matter that he*
13 *or she knows to be false on the disclosure required by this*
14 *subdivision is guilty of a misdemeanor, unless this conduct is*
15 *punishable as perjury or another provision of law provides for a*
16 *greater penalty.*

17 (6) *A defendant who fails to file the financial disclosure*
18 *required in paragraph (5), but who has filed a financial affidavit*
19 *or financial information pursuant to subdivision (c) of Section*
20 *987, shall be deemed to have waived the confidentiality of that*
21 *affidavit or financial information as to a victim in whose favor the*
22 *order of restitution is entered pursuant to subdivision (f). The*
23 *affidavit or information shall serve in lieu of the financial*
24 *disclosure required in paragraph (5), and paragraphs (7) to (10),*
25 *inclusive, shall not apply.*

26 (7) *Except as provided in paragraph (6), the defendant shall*
27 *file the disclosure with the clerk of the court no later than the date*
28 *set for the defendant's sentencing, unless otherwise directed by the*
29 *court. The disclosure may be inspected or copied as provided by*
30 *subdivision (b), (c), or (d) of Section 1203.05.*

31 (8) *In its discretion, the court may relieve the defendant of the*
32 *duty under paragraph (7) of filing with the clerk by requiring that*
33 *the defendant's disclosure be submitted as an attachment to, and*
34 *be available to, those authorized to receive the following:*

35 (A) *Any report submitted pursuant to subparagraph (C) of*
36 *paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)*
37 *of Section 1203.*

38 (B) *Any stipulation submitted pursuant to paragraph (4) of*
39 *subdivision (b) of Section 1203.*

1 (C) Any report by the probation officer, or any information
2 submitted by the defendant applying for a conditional sentence
3 pursuant to subdivision (d) of Section 1203.

4 (9) The court may consider a defendant's unreasonable failure
5 to make a complete disclosure pursuant to paragraph (5) as any
6 of the following:

7 (A) A circumstance in aggravation of the crime in imposing a
8 term under subdivision (b) of Section 1170.

9 (B) A factor indicating that the interests of justice would not be
10 served by admitting the defendant to probation under Section
11 1203.

12 (C) A factor indicating that the interests of justice would not be
13 served by conditionally sentencing the defendant under Section
14 1203.

15 (D) A factor indicating that the interests of justice would not be
16 served by imposing less than the maximum fine and sentence fixed
17 by law for the case.

18 (10) A defendant's failure or refusal to make the required
19 disclosure pursuant to paragraph (5) shall not delay entry of an
20 order of restitution or pronouncement of sentence. In appropriate
21 cases, the court may do any of the following:

22 (A) Require the defendant to be examined by the district
23 attorney pursuant to subdivision (h).

24 (B) If sentencing the defendant under Section 1170, provide
25 that the victim shall receive a copy of the portion of the probation
26 report filed pursuant to Section 1203.10 concerning the
27 defendant's employment, occupation, finances, and liabilities.

28 (C) If sentencing the defendant under Section 1203, set a date
29 and place for submission of the disclosure required by paragraph
30 (5) as a condition of probation or suspended sentence.

31 (g) The court shall order full restitution unless it finds
32 compelling and extraordinary reasons for not doing so, and states
33 those reasons on the record. A defendant's inability to pay shall not
34 be considered a compelling and extraordinary reason not to
35 impose a restitution order, nor shall inability to pay be a
36 consideration in determining the amount of a restitution order.

37 (h) The district attorney may request an order of examination
38 pursuant to the procedures specified in Article 2 (commencing with
39 Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of

1 *the Code of Civil Procedure, in order to determine the defendant's*
2 *financial assets for purposes of collecting on the restitution order.*

3 (i) *A restitution order imposed pursuant to subdivision (f) shall*
4 *be enforceable as if the order were a civil judgment.*

5 (j) *The making of a restitution order pursuant to subdivision (f)*
6 *shall not affect the right of a victim to recovery from the Restitution*
7 *Fund as otherwise provided by law, except to the extent that*
8 *restitution is actually collected pursuant to the order. Restitution*
9 *collected pursuant to this subdivision shall be credited to any other*
10 *judgments for the same losses obtained against the defendant*
11 *arising out of the crime for which the defendant was convicted.*

12 (k) *For purposes of this section, "victim" shall include all of*
13 *the following:*

14 (1) *The immediate surviving family of the actual victim.*

15 (2) *Any corporation, business trust, estate, trust, partnership,*
16 *association, joint venture, government, governmental subdivision,*
17 *agency, or instrumentality, or any other legal or commercial entity*
18 *when that entity is a direct victim of a crime.*

19 (3) *"Derivative victims" as defined in Section 13951 of the*
20 *Government Code.*

21 (l) *At its discretion, the board of supervisors of any county may*
22 *impose a fee to cover the actual administrative cost of collecting*
23 *the restitution fine, not to exceed 10 percent of the amount ordered*
24 *to be paid, to be added to the restitution fine and included in the*
25 *order of the court, the proceeds of which shall be deposited in the*
26 *general fund of the county.*

27 (m) *In every case in which the defendant is granted probation,*
28 *the court shall make the payment of restitution fines and orders*
29 *imposed pursuant to this section a condition of probation. Any*
30 *portion of a restitution order that remains unsatisfied after a*
31 *defendant is no longer on probation shall continue to be*
32 *enforceable by a victim pursuant to Section 1214 until the*
33 *obligation is satisfied.*

34 (n) *If the court finds and states on the record compelling and*
35 *extraordinary reasons why a restitution fine or full restitution*
36 *order should not be required, the court shall order, as a condition*
37 *of probation, that the defendant perform specified community*
38 *service, unless it finds and states on the record compelling and*
39 *extraordinary reasons not to require community service in addition*
40 *to the finding that restitution should not be required. Upon*

1 *revocation of probation, the court shall impose restitution*
2 *pursuant to this section.*

3 *(o) The provisions of Section 13963 of the Government Code*
4 *shall apply to restitution imposed pursuant to this section.*

5 *(p) This section shall become operative on January 1, 2006.*

6 *SEC. 9. The Administrative Office of the Courts shall*
7 *establish a workgroup to review the current policies and processes*
8 *by which criminal fines and penalties are imposed by the courts,*
9 *including a review of how restitution fines and orders are imposed*
10 *and collected by the courts.*

11 *(b) The workgroup shall do all of the following:*

12 *(1) Evaluate the cumulative and marginal impact of statutorily*
13 *imposed restitution fines on the collection of the fines and the*
14 *offender's actual ability to pay.*

15 *(2) Evaluate the imposition of other fines and penalties and*
16 *how all of those fines and penalties interact and affect the*
17 *collection of the total imposed.*

18 *(3) Develop recommendations that are intended to improve the*
19 *effectiveness of the collection of fines for the victims of crime*
20 *program and increased collections for that program as well as the*
21 *other fines and penalties imposed on offenders.*

22 *(4) Consider the impact of increased imposition of fines and*
23 *penalties as an option to fund state programs.*

24 *(c) The workgroup shall be chaired by the Director of the*
25 *Administrative Office of the Courts or his or her designee. The*
26 *workgroup shall be composed of representatives of the courts,*
27 *probation department, Department of Corrections, the California*
28 *Youth Authority, the California Victim Compensation and Claims*
29 *Board, groups representing victims of crimes and offender*
30 *families, public defenders, district attorneys, the Commission on*
31 *Peace Officer Standards and Training, local governments, the*
32 *Legislative Analyst, and other groups as determined by the*
33 *chairperson.*

34 *(d) The workgroup shall report its findings and*
35 *recommendations to the Legislature no later than February 1,*
36 *2004.*

37 *SEC. 10. This act is an urgency statute necessary for the*
38 *immediate preservation of the public peace, health, or safety*
39 *within the meaning of Article IV of the Constitution and shall go*
40 *into immediate effect. The facts constituting the necessity are:*

1 *In order that the changes made by this act to the Victims*
2 *Compensation Program may take effect, the diversion restitution*
3 *fees imposed on criminal defendants may be increased, and a*
4 *workgroup be established to review the policies and processes by*
5 *which criminal fines and penalties are imposed may take effect, at*
6 *the earliest possible time, it is necessary for this act to take effect*
7 *immediately as an urgency statute.*

